

CHAPTER 678

S.B. No. 893

AN ACT

relating to the agreement of spouses regarding certain rights in certain property.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter C, Chapter 5, Family Code, as amended, is amended to read as follows:

SUBCHAPTER C. PROPERTY AGREEMENTS

PART 1. UNIFORM PREMARITAL AGREEMENT ACT

Sec. 5.41. *DEFINITIONS. In this part:*

(1) *"Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.*

(2) *"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.*

Sec. 5.42. *FORMALITIES. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.*

Sec. 5.43. *CONTENT. (a) Parties to a premarital agreement may contract with respect to:*

(1) *the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;*

(2) *the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;*

(3) *the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;*

(4) *the modification or elimination of spousal support;*

(5) *the making of a will, trust, or other arrangement to carry out the provisions of the agreement;*

(6) *the ownership rights in and disposition of the death benefit from a life insurance policy;*

(7) *the choice of law governing the construction of the agreement; and*

(8) *any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.*

(b) *The right of a child to support may not be adversely affected by a premarital agreement.*

Sec. 5.44. *EFFECT OF MARRIAGE. A premarital agreement becomes effective on marriage.*

Sec. 5.45. *AMENDMENT; REVOCATION. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.*

Sec. 5.46. *ENFORCEMENT. (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:*

(1) *that party did not execute the agreement voluntarily; or*

(2) *the agreement was unconscionable when it was executed and, before execution of the agreement, that party:*

(A) *was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;*

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Sec. 5.47. **ENFORCEMENT: VOID MARRIAGE.** If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Sec. 5.48. **LIMITATION OF ACTIONS.** Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Sec. 5.49. **APPLICATION AND CONSTRUCTION.** Sections 5.41 through 5.50 of this subchapter shall be applied and construed to effect their general purpose to make uniform the law with respect to the subject of these sections among states enacting them.

Sec. 5.50. **SHORT TITLE.** This part may be cited as the Uniform Premarital Agreement Act.

PART 2. OTHER PROPERTY AGREEMENTS

Sec. 5.51. **PROPERTY DEFINED.** In this part, "property" has the meaning assigned by Section 5.41 of this code.

Sec. 5.52. **PARTITION OR EXCHANGE OF COMMUNITY PROPERTY.** At any time, the spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes his or her separate property.

Sec. 5.53. **AGREEMENTS BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY.** At any time, the spouses may agree that the income or property arising from the separate property then owned by one of them, or which may thereafter be acquired, shall be the separate property of the owner.

Sec. 5.54. **FORMALITIES.** A partition or exchange agreement must be in writing and signed by both parties.

Sec. 5.55. **ENFORCEMENT.** (a) A partition or exchange agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) An issue of unconscionability of a partition or exchange agreement shall be decided by the court as a matter of law.

Sec. 5.56. **PARTITION OR EXCHANGE AGREEMENTS: RIGHTS OF CREDITORS, RECORDATION.** (a) A provision of a partition or exchange agreement made

under this subchapter is void with respect to the rights of a preexisting creditor whose rights are intended to be defrauded by it.

(b) A partition or exchange agreement made under this subchapter may be recorded in the deed records of the county in which a party resides and in the county in which the real property affected is located. An agreement, partition, or exchange agreement made under this subchapter is constructive notice to a good faith purchaser for value or a creditor without actual notice only if the instrument is acknowledged and recorded in the county in which the real property is located.

~~[Sec. 5.41. AGREEMENT IN CONTEMPLATION OF MARRIAGE. (a) Before marriage, persons intending to marry may enter into a marital property agreement concerning their property then existing or to be acquired, as they may desire.~~

~~(b) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate, and if there be no guardian of the minor's estate, with the subscribed, written consent of the minor's managing conservator.~~

~~[Sec. 5.42. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY. At any time, the spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes his or her separate property.~~

~~[Sec. 5.43. AGREEMENTS BETWEEN SPOUSES CONCERNING INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY. At any time, the spouses may agree that the income or property arising from the separate property then owned by one of them, or which may thereafter be acquired, shall be the separate property of the owner.~~

~~[Sec. 5.44. FORMALITIES OF AGREEMENTS. Each agreement, partition, or exchange agreement made under this subchapter must be in writing and subscribed by all parties.~~

~~[Sec. 5.45. MARITAL AGREEMENTS: BURDEN OF PROOF. In any proceeding in which the validity of a provision of an agreement, partition, or exchange agreement made under this subchapter is in issue as against a spouse or a person claiming from a spouse, the burden of showing the validity of the provision is on the party who asserts it. The proponent of the agreement, partition, or exchange agreement or any person claiming under the proponent has the burden to prove by clear and convincing evidence that the party against whom enforcement of the agreement is sought gave informed consent and that the agreement was not procured by fraud, duress, or overreaching.~~

~~[Sec. 5.46. MARITAL AGREEMENTS: RIGHTS OF CREDITORS, RECORDATION. (a) A provision of an agreement, partition, or exchange agreement made under this subchapter is void with respect to rights of a preexisting creditor whose rights are intended to be defrauded by it.~~

~~(b) An agreement, partition, or exchange agreement made under this subchapter may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, an agreement, partition, or exchange agreement made under this subchapter is not constructive notice to a good faith purchaser for value or a creditor without actual notice unless the instrument is acknowledged and recorded in the county in which the real property is located.]~~

SECTION 2. Section 46, Texas Probate Code, as amended, is amended to read as follows:

Sec. 46. JOINT TENANCIES [ABOLISHED]. (a) *If [Where] two [(2)] or more persons hold an interest in property [estate, real, personal, or mixed,] jointly, and one [(1)] joint owner dies before severance, the [his] interest of the decedent in the [said] joint estate shall not survive to the remaining joint owner or [joint] owners[,], but shall pass by will or intestacy from the decedent [descend to, and be vested in, the heirs or legal*

~~representatives of such deceased joint owner in the same manner] as if the decedent's [his] interest had been severed [and ascertained]. By [Provided, however, that by] an agreement in writing of the joint owners, however, [of property] the interest of any joint owner who dies may be made to survive to the surviving joint owner or [joint] owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.~~

~~(b) Spouses may agree in writing that all or part of their community property which is titled or held with indicia of title becomes the property of the surviving spouse on the death of a spouse. [A written agreement between spouses and a bank, savings and loan, credit union, or other financial institution may provide that existing funds or securities on deposit and funds and securities to be deposited in the future and interest and income thereon shall by that agreement be partitioned into separate property and may further provide that the property partitioned by that agreement be held in joint tenancies and pass by right of survivorship.]~~

SECTION 3. (a) This Act takes effect September 1, 1987, except as otherwise provided.

(b) Section 2 of this Act takes effect when the constitutional amendment proposed by the 70th Legislature, Regular Session, permitting spouses to make an agreement concerning the right of survivorship of certain community property is adopted. If that amendment is not adopted, Section 2 of this Act has no effect.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 2, 1987, by the following vote: Yeas 31, Nays 0; May 30, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 31, 1987, House granted request of the Senate; June 1, 1987, Senate adopted Conference Committee Report by a viva-voce vote. Passed the House, with amendments, on May 30, 1987, by a non-record vote; May 31, 1987, House granted request of the Senate for appointment of Conference Committee; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987, except § 2 effective upon adoption of S.J.R. No. 35.